

ANALYSIS OF AMENDED BILL

Author: Sweeney Analyst: Marion Mann DeJong Bill Number: AB 1631

Related Bills: _____ Telephone: (916) 845-6979 Amended Date: 02/06/98

Attorney: Doug Bramhall Sponsor: _____

SUBJECT: Shift Burden Of Proof/"Taxpayer's Rights Protection Act of 1998"

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

☒ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED _____ STILL APPLIES.

☒ OTHER - See comments below.

SUMMARY OF BILL

Under the Revenue and Taxation Code (R&TC), this bill would do the following:

- Shift the burden of proof from taxpayers to the Board of Equalization (BOE) with respect to sales taxes under certain circumstances. This provision is not discussed in this analysis because it does not impact the programs administered by the department.
- Shift the burden of proof from taxpayers to the Franchise Tax Board (FTB) in any court or administrative tax proceeding or in any evaluation of tax compliance with respect to factual issues relevant to ascertaining the liability of a "cooperating taxpayer." (See Burden of Proof on page 2.)
- Require FTB to provide taxpayers, upon their request, with itemized receipts proportionately allocating, in dollars, the taxpayer's total tax payments among specified major expenditure categories. (See Itemized Receipt on page 7.)
- Allow a taxpayer to make payment of taxes by making a deposit in the nature of a cash bond to stop the running of interest, and still preserve the taxpayer's right to file a claim for refund. (See Payment of Cash Bonds on page 10.)

DEPARTMENTS THAT MAY BE AFFECTED:

___ STATE MANDATE

___ GOVERNOR'S APPOINTMENT

Board Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
___X___ PENDING

Agency Secretary Position:

___ S ___ O
___ SA ___ OUA
___ N ___ NP
___ NA ___ NAR
DEFER TO _____

GOVERNOR'S OFFICE USE

Position Approved _____
Position Disapproved _____
Position Noted _____

Department/Legislative Director Date
Gerald H. Goldberg **3/2/98**

Agency Secretary Date

By: _____ Date: _____

Under the Unemployment Insurance Code (UIC), this bill would do the following:

- Provide that interest shall not be charged on penalties and would make related clarifying changes. Although this provision does not impact the programs administered by the department, a discussion is provided. (See UIC/Interest on Penalties on page 12.)
- Amend the due process provisions to allow taxpayers to make partial payments and remain in the appeals process. This provision is not discussed in this analysis because it does not impact the programs administered by the department.

SUMMARY OF AMENDMENT

The bill as introduced declared legislative intent to shift the burden of proof from taxpayers to state agencies that collect taxes. The February 6, 1998, amendments provide the changes in the law to shift the burden of proof as well as other taxpayer protections.

EFFECTIVE DATE

This bill would become effective on January 1, 1999.

LEGISLATIVE HISTORY

AB 1488, AB 1633, SB 1166, SB 1425, SB 1478.

BOARD POSITION

Pending.

1. Burden of Proof

EFFECTIVE DATE

This provision would be operative January 1, 1999.

BACKGROUND

H.R. 2676, which is known as the "Internal Revenue Service Restructuring and Reform Act of 1997," contains 31 provisions under the title Taxpayer Protection and Rights. One such provision would shift the burden of proof in court proceedings from the taxpayer to the Internal Revenue Service (IRS). Under the proposed federal bill, the burden of proof shift would not apply to partnerships, corporations or trusts whose net worth is more than \$7 million. In addition, the burden of proof shift would apply only if the taxpayer has fully cooperated with the IRS, "including providing, within a reasonable period of time, access to and inspection of all witnesses, information, and documents within the control of the taxpayer, as reasonably requested." The provision would apply to court proceedings arising in connection with examinations commencing after the date of the enactment of the Act.

This proposed legislation passed the House of Representatives on November 5, 1997. The Senate is expected to hold hearings early this year and produce its own version of IRS restructuring legislation by spring.

SPECIFIC FINDINGS

Under current federal law, taxpayers may be requested by the IRS to substantiate items reflected on their federal income tax returns. The IRS may issue a deficiency assessment based on: taxpayers' inability to substantiate items reflected on their income tax return or third party information returns (W-2s, 1099s, etc.). If collection is determined by IRS to be in jeopardy, a jeopardy assessment is issued, whereby the amount of the deficiency is immediately due and payable.

Taxpayers may protest deficiency assessments or jeopardy assessments to the IRS. In the event the IRS denies the protest, under the federal appeals system, the taxpayer may either: (1) appeal the assessment to the Tax Court (which has a small claims division for amounts of \$10,000 or less), or (2) pay the assessment and file a claim for refund with the IRS. Once the IRS denies the claim, the taxpayer may file suit for refund in an U.S. District Court or the U.S. Court of Claims.

In these reviews, a rebuttable presumption exists that the IRS's determination of tax liability is correct. Taxpayers have the burden of proving that the IRS's action was incorrect and establishing the merits of their claims by a preponderance of the evidence. This review is an independent judicial review by a trial court upon evidence submitted by the parties. Both the taxpayer and the IRS can bring actions in appellate courts to appeal final adverse determinations, except small claims division determinations, which are binding.

Under current Personal Income Tax Law (PITL) and Bank and Corporation Tax Law (BCTL), taxpayers may be requested by the Franchise Tax Board (FTB) to furnish substantiation of the items reflected on their income tax returns. The FTB may issue a proposed deficiency assessment based on: taxpayers' inability to substantiate items reflected on their income tax return, third-party information returns (W-2s, 1099s, etc.), or information FTB receives from IRS. In the rare instance that collection is determined by FTB to be in jeopardy, a jeopardy assessment is issued whereby the amount of the deficiency is immediately due and payable.

If the taxpayer disputes an assessment, the taxpayer may (1) protest the proposed deficiency assessment or jeopardy assessment by filing a written "protest" with the FTB, or (2) pay the assessment and file a claim for refund (in which case the taxpayer may proceed to the Board of Equalization [BOE] or Superior Court if the claim is denied or no action is taken on the claim within six months).

The taxpayer's forum for appealing an adverse FTB action is the BOE. The BOE is the first independent administrative level of review of an FTB action. During the appeal process, the BOE makes an independent determination of the action. The BOE accepts evidence submitted by the taxpayer and, if requested by the taxpayer, grants an oral hearing on the matter. In the independent review by BOE, there is a rebuttable presumption that the FTB action was correct. Hence, taxpayers have the burden of producing evidence to show that the FTB's action was

incorrect and establishing the merits of their position by a preponderance of the evidence.

In the event of a final adverse BOE decision the taxpayer's recourse is to pay the amount due and bring an action for refund against the state in Superior Court. With residency matters payment is not required. In litigation, as with appeals, there is a rebuttable presumption that the FTB action was correct. In addition, a taxpayer in a suit for refund is the plaintiff. Consequently, taxpayers (like plaintiffs in other civil actions) have the burden of proving that the FTB's action was incorrect and establishing the merits of their claims by a preponderance of the evidence.

This provision would shift the burden of proof from taxpayers to the FTB in any court or administrative tax proceeding or in any evaluation of tax compliance with respect to factual issues relevant to ascertaining the liability of a "cooperating taxpayer." A cooperating taxpayer would be a taxpayer that has provided access to all available relevant books and records as reasonably requested by FTB. Books and records would be "relevant" if they are pertinent or directly related to the matter or issue at hand and are normally maintained by the "average prudent businessperson" in a similar business activity. Relevant books and records would not include federal or state tax returns filed with another agency (e.g., federal income tax return, sales tax return).

This provision would not be construed to supersede or limit the application of any legal requirement to substantiate any item.

This provision would prohibit unreasonable search or access to records in violation of the United States Constitution, California Constitution or any other law.

Policy Considerations

This provision would raise the following policy considerations.

- Shifting the burden of proof in any court or administrative tax proceeding or in any evaluation of tax compliance would impact every assessment made by the department and could result in reduced compliance and more intrusive audits.

Taxpayers may be more likely to take aggressive positions on returns and contest audit results. Audits would have to be more thorough to obtain the proof necessary to sustain audit findings.

Further, filing enforcement efforts may be impaired since deficiency assessments issued to taxpayers that do not file returns are sometimes based on limited income information.

- On the other hand, for many taxpayers the income tax system is their only contact with government and the large bureaucracy frightens them. Thus, they may not protest or appeal audit findings even if they believe them incorrect. Proponents believe that this provision would create a better balance between government and taxpayers.

- Generally in civil cases the burden of proof is on the plaintiff, the party seeking corrective action. The taxpayer is the plaintiff in all California Superior Court actions. In addition, for tax cases the taxpayer has control of the records and documents necessary to ascertain the taxpayer's tax liability.
- The burden of proof provision of this bill does not conform to the proposed federal provision, but is instead much broader.
- Currently, the taxpayer is asked to substantiate the amounts reported on the return, and deductions are considered to be a matter of legislative grace. The Internal Revenue Code (IRC) and R&TC have few statutes that specifically require substantiation; the requirement to substantiate an item rests mainly in case law regarding burden of proof.
- Unlike Tax Court or other federal courts, the administrative review of tax cases by the BOE is currently performed in an informal environment without extensive evidentiary rules. This is designed to provide a "user friendly" forum to taxpayers contesting their assessment. A shift in the burden of proof would necessitate some formalization of the evidentiary elements of these proceedings. Accordingly, this bill may lead to a "greater balance" between the parties, but may lead to a more formalized hearing process with a greater need for professional representation for taxpayers.

Implementation Considerations

This provision would raise the following implementation considerations. Department staff is available to help the author resolve these concerns.

- The terms "administrative tax proceeding" and "any evaluation of tax compliance" are not defined. Undefined terms can lead to disputes between taxpayers and the department. Unless administrative tax proceeding is defined, it is unclear if the burden of proof would shift to FTB at some internal department administrative proceeding or at the BOE (which is the external administrative proceeding).
- The term "cooperating taxpayer" is defined by using several terms that can be interpreted in more than one way. Determining if a taxpayer was cooperating would be difficult. The following examples illustrate some potential issues. (1) Available. If the taxpayer is deducting expenses passed through from a partnership would the partnership records be considered available to the taxpayer? What about a taxpayer that does not maintain records or destroys the records? (2) Relevant and Reasonable. Taxpayers and FTB may disagree about what is relevant or reasonable.
- The term "relevant books and records" again uses terms that can be interpreted in more than one way (i.e., pertinent, directly related, issue at hand, normally maintained, average prudent businessperson).

- Excluding federal or state tax returns filed with another agency from relevant books and records could result in audit delays. In some cases those records may no longer be available. For example, since the statute of limitations under federal law is shorter than under state law (generally three years instead of four years), the return may no longer be available from the IRS.
- One significant department workload is assessments based upon federal Revenue Agent Reports (changes made by the IRS to gross income or deductions reported on the federal return). Currently, such adjustments are presumed to be correct. It is unclear whether this provision would remove that presumption and require the department to prove that the changes made by the IRS to the federal return are correct.
- In refund cases or in protest cases where the taxpayer asserts a new issue supporting their position, the department may not have had an opportunity to obtain supporting documents from the taxpayer. It is unclear whether the audit staff would be required to seek additional supporting data for all cases to protect the state's interest in the event the case is protested or appealed.
- Currently, FTB generally retains taxpayer records for a period of three to four years and then destroys them, as authorized under R&TC Section 19530. Shifting the burden of proof to the department may require longer retention of records and increased costs for storage.
- The potential of a shift in the burden of proof would require FTB to engage in more extensive evidentiary gathering activities. This may require personnel additions to the audit and legal staff.

Technical Considerations

The bill makes reference to the "board" as an apparent reference to the FTB. However, under the PITL, AFITL and BCTL, reference to the "board" means the BOE. Amendments 1 through 4 would change "board" to "Franchise Tax Board."

FISCAL IMPACT

Departmental Costs

The departmental costs associated with this provision are unknown. The costs could increase, however, to the extent that additional supporting evidence would be required on all cases to support the state's position.

Tax Revenue Estimate

This provision would result in unknown, but potentially significant, revenue losses.

Tax Revenue Discussion

The revenue loss for this provision would be determined by those assessments that may be revised due to incomplete documentation to support the

assessment and revenues lost from possible negative effects on voluntary compliance.

Revenue losses in any given year are unknown. It is not possible to determine the number of cases in which the outcome would be changed because of the shift in the burden of proof. It is not clear how the courts would define "cooperating taxpayer." Currently, the department assesses a net amount of approximately \$1.3 billion annually for both PIT and B&CT programs.

The Joint Committee on Taxation in its revenue estimate of H.R. 2676 estimated that shifting the burden of proof would result in a cumulative revenue loss of \$795 million for fiscal years 1998 to 2002. It has been expressed at the federal level that a negative revenue impact may result from reduced self-assessed reporting, which could have an effect on departmental audit programs. Because the language of this bill does not conform to the federal proposed legislation, it is not possible to use the federal revenue impact to measure the impact from this bill.

2. Itemized Receipt

EFFECTIVE DATE

This provision would be operative January 1, 1999.

SPECIFIC FINDINGS

Under federal law, the President is required to submit to the Congress a budget proposal for the fiscal year that begins the following October. The budget sets forth the President's proposed receipts, spending and deficit or surplus for the federal government. The plan includes recommendations for new legislation as well as recommendations to change, eliminate and add programs. After receiving the President's proposal, the Congress reviews it and makes changes. It first passes a budget resolution setting its own targets for receipts, outlays and deficit or surplus. Individual spending and revenue bills are then enacted consistent with the goals of the budget resolution.

Under state law, like federal law, the Governor is required to submit to the Legislature a budget proposal for the fiscal year that begins the following July. The Legislature reviews the budget, makes changes and enacts bills consistent with the budget. The Department of Finance (DOF) prepares cash flow estimates based on the budget. The State Controller provides Statements of General Fund Cash Receipts and Disbursements, which compares actual receipts and disbursements to the DOF cash flow projections.

Current law does not require the IRS or FTB to acknowledge receipt of tax payments or disclose how tax payments are spent. The IRS does include in the personal income tax booklets information regarding federal income and outlays (expenditures) for the prior fiscal year (e.g., 1996 fiscal year information is in the 1997 tax booklet used by taxpayers in 1998). FTB includes in its annual report information regarding general fund income and expenditures.

This provision would require FTB to provide individual taxpayers, upon request, an itemized receipt proportionately allocating, in dollars, the taxpayer's total tax payments among specified expenditure categories.

This provision would require the Legislative Analyst Office to determine the percentage of General Fund expenditures for the following categories.

- Education (kindergarten through 12th grade)
- Health and welfare
- Higher education
- Youth and adult corrections
- Courts
- Resources
- Business, transportation, and housing
- Tax relief
- State and consumer services
- Environmental protection
- Other

The provision would require the request for receipt to be made at the time of filing the return for the taxable year. FTB would be required to make the receipt available as soon as practicable upon the processing of the taxpayer's return.

FTB is encouraged to utilize modern technologies such as electronic mail and the Internet to minimize the cost of sending receipts. FTB would be required to establish an interactive program on its Internet website to allow taxpayer to generate income tax receipts.

The provision prohibits the imposition of fees to cover the cost associated with the production or distribution of the tax receipt.

Policy Considerations

Educating taxpayers regarding how their tax dollars are spent may lead to increased compliance. However, to the extent that taxpayers disagree with the legislative budget decisions compliance could decrease.

Implementation Considerations

This provision would raise the following implementation considerations. Department staff is available to assist the author with any necessary amendments.

- It is unclear whether the author intends the department to do one or all three of the following: (1) acknowledge tax payments, (2) provide information (upon request) to taxpayers regarding how tax payments are spent either by letters to taxpayers or via FTB's Internet website, or (3) provide interactive account information via the Internet to allow taxpayer to print their own acknowledgement or receipt indicating how tax money is spent.

The legislative intent language states that taxpayers do not receive

acknowledgement of payment from FTB or an explanation itemizing how tax payments are spent and that providing such information may increase compliance (page 3 of the bill, lines 13 to 31). The bill provides that the taxpayer should make a request for a *tax receipt* with the filing of the tax return (page 6 of the bill, lines 35 to 40). The bill further provides that FTB should utilize modern technologies such as electronic mail and the Internet to minimize the cost of receipts and establish an interactive program on its Internet website to allow taxpayers to generate their own *income tax receipts*.

- The department currently does not have safeguards to allow taxpayer information to be accessed thorough the Internet. Until such safeguards are in place, the department could not implement an interactive system to allow taxpayers account information to print receipts.
- It is unclear whether the itemized receipt should be based on budgeted cash flow projections for the current fiscal year or on actual income and expenditures for the prior fiscal year.
- It is unclear whether the department would be required to provide a receipt for prior tax years if the taxpayer files a delinquent tax return.

Technical Considerations

The following technical amendments are provided.

- This provision would add Section 18405 to the R&TC to require FTB to provide taxpayers, upon request, an itemized receipt. A Section 18405 already exists in the R&TC. Amendments 5 and 6 would change 18405 to 18406.
- Amendments 7 and 8 would change "board" to "Franchise Tax Board."

FISCAL IMPACT

Departmental Costs

The department's costs to administer this provision cannot be determined until implementation concerns have been resolved.

If the author simply intends to have information regarding how tax money is spent available on the department's Internet website, the departmental costs would likely be minor. If the author intends for requests to be keyed from the tax return (since the request must be made at the time of filing the tax return), receipts to be mailed or taxpayers to have interactive account abilities, the departmental costs could be significant.

Tax Revenue Estimate

This provision would not impact PIT or B&CT revenues.

3. Payment of Cash Bonds

EFFECTIVE DATE

This provision would be operative January 1, 1999.

SPECIFIC FINDINGS

Current federal and California law provide for the payment of interest on overpayments of tax. Cash bonds and "voluntary payments" are not overpayments of tax and thus are not paid with interest when refunded to the taxpayer.

Current federal law allows a taxpayer to file a petition with the Tax Court for a redetermination of a deficiency within 90 days (150 days if addressed to persons outside the United States) after the notice of deficiency is mailed. No assessment of a deficiency may be made until after the expiration of the 90-day period, or if petition is filed, until the decision of the Tax Court is final.

Current federal procedures (Rev. Proc. 84-58) allow a deposit in the nature of a cash bond while a deficiency is pending in administrative proceedings or Tax Court. The bond amount may be refunded without interest at any time, and if the taxpayer prevails in administrative proceedings, the entire bond may be refunded to the taxpayer without interest. This is an important strategic tool for taxpayers because a taxpayer can appeal a Tax Court decision all the way to the Supreme Court without paying the deficiency.

Under federal law and procedures, if during the administrative review or appeals process a taxpayer pays the deficiency rather than posting a cash bond, the taxpayer must start over from the beginning with a refund claim that is treated as a new case. The taxpayer must then appeal any IRS action on the new refund claim to an U.S. district court or the U.S. Court of claims rather than the Tax Court.

Under California law, unlike the federal system, a protest or appeal may be converted to a claim for refund upon payment, without the necessity of starting a new administrative process.

The California Constitution (Article XII, Section 32) requires that all tax¹ must be paid prior to going to court on a claim for refund.

Current department practice with respect to payments of tax made during an audit is to treat them as payments for the year in question, and to show them as payments reducing the balance due when the proposed assessment is finally issued. If the payments exceed the proposed assessment amount, the excess is refunded with interest.

If a taxpayer wants to post a "cash bond" rather than make a payment of tax, **current department procedures** treat such payments as "voluntary payments" that do not earn interest. However, this is an unusual occurrence because it is beneficial to the taxpayer to have the payment designated as a payment of tax, so

¹ The California Supreme court is currently considering whether interest as well as tax must be paid in the case of Agnew v. SBE.

that interest can be paid on the overpayment in the event the taxpayer is successful.

Policy Considerations

This provision would raise the following policy considerations.

- Under the federal system only deficiency cases may be heard by the Tax Court, and payment results in the starting of a new administrative process and appeals to an U.S. district Court or the U.S. Court of Claims. The California system allows a protest or appeal to be converted to a claim for refund upon payment, without the necessity of starting a new administrative process. Thus, the primary reason that taxpayers use the federal cash bond procedure does not exist for California tax disputes.
- This proposal may trap unwary taxpayers. Currently, taxpayers can stop the running of interest by paying the proposed deficiency under protest (automatic claim for refund), and if they are successful, the overpayment is refunded with interest to the taxpayer. Taxpayers that choose to post cash bonds rather than pay the proposed assessment under protest will earn no interest if successful and the bond is returned. Similarly, the taxpayer will get no deduction on the federal return for taxes paid if they pay with a cash bond.
- Allowing taxpayers to post cash bonds could slow the protest and appeal process. This would occur because taxpayers could get two chances for department staff to review protests. For example, the taxpayer could post a cash bond and protest the assessment. Department staff would review the protest and in the event of an adverse finding, the taxpayer could request the tax bond be returned, pay the assessment and file a claim for refund starting the process over again.

Implementation Considerations

It is unclear what the effect would be if the cash bond is less than the full deficiency amount. Under the constitutional prohibition against prepayment court actions, well-established law is that no court action may be maintained until the full amount for the year is paid in full.

FISCAL IMPACT

Departmental Costs

This provision would not significantly impact the department's costs.

Tax Revenue Estimate

This provision would not impact PIT or B&CT revenues. It is not possible to project in advance the response of taxpayers to the posting of cash bonds for their tax liabilities, especially in conjunction with the proposed change to the burden of proof.

4. UIC/Interest On Penalties

EFFECTIVE DATE

The bill specifies that this provision is clarifying existing law and would therefore apply as of January 1, 1994.

BACKGROUND

During 1993, the Franchise Tax Board supported SB 3 (Stats. 1993, Ch. 31), which repealed administrative provisions from the PITL and B&CTL and reenacted them in the Administration of Franchise and Income Tax Laws (AFITL) created by the legislation. The AFITL provided a continuity with prior law provision (Section 18412) that stated that, where provisions of the AFITL were substantially the same as statutory provisions relating to the same subject matter in the PITL or B&CTL before SB 3, they should be construed as restatements and continuations of the law and not as new enactments. SB 3 became operative on January 1, 1994.

Prior to the January 1, 1994, R&TC Section 19269 contained provisions which determined both the rate of interest to be applied to assessments and refunds, and in subdivision (b), the method for including penalties, interest and additions to tax in the balance due for purposes of applying the daily compounded interest rate.

SB 3 repealed Section 19269 and reenacted its provisions into two sections, Section 19521 (interest rate) and 19106 (method of computing interest on penalties). SB 3 also amended the UIC to update cross-references to the R&TC, including changes to former Section 19269 cross-references. SB 3 included amendments to Sections 1113 and 1129 of the UIC to provide for interest at the adjusted annual rate and by the method established pursuant to Section 19521 of the R&TC, but failed to include a reference to the method of computing interest as provided under prior law.

On December 12, 1997, the Legislative Counsel opined (Legislative Counsel Opinion #24964) that under current law neither Section 1113 of the UIC nor any other provision of law authorizes EDD to charge interest on penalties. However, prior to the enactment of SB 3, EDD had authority to charge interest on penalties imposed under Section 1112 of the UIC, but did not have authority to charge interest on penalties imposed under section 1112.5 or 1114 of the UIC.

SPECIFIC FINDINGS

Under current law, the UIC, the Employment Development Department (EDD) is responsible for collecting employment taxes from businesses that employ workers in California. These taxes include unemployment insurance contributions and the employment training tax, both paid by employers; and disability insurance contributions and personal income taxes, both withheld from employees' pay and remitted to EDD by employers. EDD collects these taxes from employers as frequently as eight times a month or as seldom as annually, depending on the employer. In addition to paying taxes, the law requires employers to file quarterly returns reporting wages paid to workers, W-2s and other reports.

The UIC provides for the assessment of tax delinquency penalties and report delinquency penalties.

Section 1113 of **the UIC** allows interest to be charged on taxes owed. This applies to employers who owe taxes but are not audited or investigated. Typically, these employers file returns but don't pay taxes on time. Employers are liable for interest on contributions at the adjusted annual rate *and by the method* established pursuant to Section 19521 of the R&TC.

Section 1129 of **the UIC** allows interest to be charged on assessments made pursuant to audit or investigation. The amount of each assessment shall bear interest at the adjusted annual rate *and the method* established by Section 19521 of the R&TC.

The UIC does not address the calculation of interest on penalties.

This bill would amend Sections 1113 and 1129 of the UIC to specifically provide that interest shall not be charged on penalties. This bill would provide that these changes clarify existing law. This bill also would require EDD to determine the extent of the over-collection of interest, issue refunds of over-collected amounts and report to the Legislature by December 31, 1999, on the number of refunds and the total dollar amount.

Policy Considerations

Proponents argue that the UIC does not provide authority to charge interest on penalties related to tax or report delinquencies and therefore the EDD should issue refunds of overcollected interest amounts.

Opponents argue that the UIC, prior to the enactment of SB 3, clearly provided for the assessment of interest on penalties. When SB 3 repealed R&TC Section 19269 and reenacted its provisions into two sections (Section 19521 and 19106), proponents argue, the authority was not removed; the UIC simply did not contain the same clarity of language that existed prior to the enactment of SB 3.

Implementation Considerations

This provision does not impact the programs administered by FTB.

Marion Mann DeJong
(916) 845-6979
Doug Bramhall

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO AB 1631
As Amended February 6, 1998

AMENDMENT 1

On page 5, line 18, strikeout "board" and insert:

Franchise Tax Board

AMENDMENT 2

On page 5, line 21, strikeout "board" and insert:

Franchise Tax Board

AMENDMENT 3

On page 5, line 25, strikeout "board" and insert:

Franchise Tax Board

AMENDMENT 4

On page 5, line 31, strikeout "board" and insert:

Franchise Tax Board

AMENDMENT 5

On page 6, line 7, strikeout "18405" and insert:

18406

AMENDMENT 6

On page 6, line 9, strikeout "18405" and insert:

18406

AMENDMENT 7

On page 6, line 10, ~~strikeout~~ "board" and insert:

Franchise Tax Board

AMENDMENT 8

On page 6, line 16, ~~strikeout~~ "board" and insert:

Franchise Tax Board